APPEAL NO. 172757
FILED JANUARY 9, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 14, 2017, with the record closing on October 11, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to bilateral carpal tunnel syndrome (CTS); (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 30, 2016; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appeals the ALJ's determinations. The claimant contends on appeal that the ALJ erred in her determinations and that the (date of injury), compensable injury does extend to bilateral CTS, and as such she has not reached MMI and an IR cannot be assigned. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part, reformed in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the accepted compensable injury is bilateral Grade I wrists strains. The claimant testified she was injured during the course of her activities as a cashier for the employer.

EXTENT OF INJURY

We note that the ALJ mistakenly referred to bilateral CTS as "bilateral [CTS] tear" in the Decision. We reform the ALJ's decision by striking tear from the Decision section to conform to the evidence.

The ALJ's determination that the compensable injury of (date of injury), does not extend to bilateral CTS is supported by sufficient evidence and is affirmed.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination

of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in pertinent part, that the assignment of an IR shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

(Dr. F), the designated doctor appointed by the Division, examined the claimant on February 21, 2017, and certified on March 13, 2017, that the claimant reached MMI on August 30, 2016, with a zero percent IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides).

In discussing Dr. F's MMI/IR certification the ALJ stated the following:

> After the hearing, the [ALJ] determined that further clarification was needed for [Dr. F's] IR analysis and a letter of clarification (LOC) was issued to [Dr. F]. On September 29, 2017, [Dr. F] responded with justification for his use of [range of motion] findings from his . . . examination. [Dr. F] provided a reasonable explanation for the selected MMI date, he correctly calculated [the] [c]laimant's IR, and the certification is not contrary to the preponderance of the evidence.

However, neither the ALJ's LOC nor Dr. F's September 29, 2017, response are in the appeal file. We note the decision states ALJ Exhibits 1 through 6 were admitted, and those exhibits are in the appeal file. However, the record reflects that at the CCH ALJ Exhibits 1 through 5 were admitted with no mention of ALJ Exhibit 6. ALJ Exhibit 1 is the Benefit Review Conference Report; ALJ Exhibit 2 is the Insurance Carrier Information sheet; ALJ Exhibit 3 is a Request for Designated Doctor Examination (DWC-32) dated January 20, 2017; ALJ Exhibit 4 is the Commissioner Order appointing Dr. F as the designated doctor; and ALJ Exhibit 5 is the Health Care Provider Detail information for Dr. F. ALJ Exhibit 6 is the Appeals Panel Decision (APD) 100895, decided August 23, 2010. There is no other reference to ALJ Exhibit 6 in the appeal file, including any discussion with the parties after the CCH of its admittance.

As noted above neither the ALJ's LOC nor Dr. F's September 29, 2017, response are in the appeal file. The ALJ has based her MMI and IR determinations on facts that

are not in evidence. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on August 30, 2016, with a zero percent IR, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We reform the ALJ's decision by striking tear from the Decision section to conform to the evidence.

We affirm the ALJ's determination that the (date of injury), compensable injury does not extend to bilateral CTS.

We reverse the ALJ's determination that the claimant reached MMI on August 30, 2016, and we remand the issue of MMI to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is zero percent, and we remand the issue of the claimant's IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to admit into evidence the LOC and response by Dr. F that she discussed in her decision. The parties are to be provided with the ALJ's LOC and Dr. F's response and allowed an opportunity to respond. The ALJ is then to make a determination on MMI/IR consistent with the evidence and this decision

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ZNAT INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge